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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/862,905

05/22/2001

Gary P. Kasner

1915.14US03

9685

24113 7590 12/24/2008

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EXAMINER

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ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

12/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/862,905
Filing Date: May 22, 2001
Appellant(s): KASNER ET AL.

Patterson, Thunte, Skaar & Christensen, P.A.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 02, 2008 appealing from the Office action mailed June 12, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 251 which forms the basis for the rejection set forth in this Office action:

Whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent, the Director shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent. No new matter shall be introduced into the application for reissue.

The Director may issue several reissued patents for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for a reissue for each of such reissued patents.

The provisions of this title relating to applications for patent shall be applicable to applications for reissue of a patent, except that application for reissue may be made and sworn to by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent.

No reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent.

Claim Rejections - 35 USC § 251

Claims 16, 17, 21-34, 49, 51, 52, 54, 56, and 58-60 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth below. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion below.

The supplemental reissue oath/declaration filed March 18, 2008 is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

1) The reissue oath/declaration filed March 13, 2007 is defective because it fails to appropriately identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

The reissue oath/declaration filed March 18, 2008 does not clearly state an error within the original Patent. Language directed to, “[for] example, claim 16 recites, in part, a recessed area in a top panel of a roof ventilator, the recessed area being non-linear in cross section, which is broader in scope than claim 9, which recites a recessed area having a pair of side walls traversing a generally oval-shaped path. None of the other claims in U.S. Patent 5,094,041 has such a broader limitation. None of the other independent claims recite any limitations reading on said recessed area of said top panel” does not clearly establish the error upon which the instant reissue application is based.

M.P.E.P. 1414(II)(C):

Any error in the claims must be identified by reference to the specific claim(s) and the specific claim language wherein lies the error. A statement of " ...

failure to include a claim directed to ..." and then presenting a newly added claim, would not be considered a sufficient " error" statement since applicant has not pointed out what the other claims lacked that the newly added claim has, or vice versa. Such a statement would be no better than saying in the reissue oath or declaration that " this application is being filed to correct errors in the patent which may be noted from the change made by adding new claim 10." In both cases, the error has not been identified.

Claim Rejections - 35 USC § 251

Claims 16, 17, 21-34, 49, 51, 52, 54, 56, and 58-60 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

Response to Arguments

Appellants' remarks within paragraphs C and E of the arguments is not found to be persuasive. The declaration of March 18, 2008 fails to specifically identify the claim and the specific language wherein lies the error. As stated in M.P.E.P. 1414(II)(C), "[a]ny error in the claims must be identified by reference to the specific claim(s) and the specific claim language wherein lies the error. The declaration of March 18, 2008 fails to set forth "specific claim language wherein lies the error. The language of the March 18,

2008 declaration to which Appellants refer merely states, (or paraphrases), part of what claim 16 recites and part of what claim 9 recites. Though the declaration may infer that claim 16 is broader in a given sense than claim 9 the declaration fails to specifically identify that language which forms the basis for the identifiable error. Therefore, it is not clear from reviewing the supplemental declaration of March 18, 2008 as to what language forms the basis for the error upon which the instant reissue application is based.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Michael Safavi/

Primary Examiner, Art Unit 3637

Conferees:

Darnell Jayne /dj/

Lanna Mai /lm/